

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
AUBURN PACKING CO., INC.,)
Appellant,)
vs.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 333

FINDINGS OF FACT,
CONCLUSION AND ORDER

A formal hearing on the appeal of Auburn Packing Co., Inc. to a notice of civil penalty of \$50.00 for an alleged smoke emission violation came on before Board members W. A. Gissberg and James Sheehy, with W. A. Gissberg presiding, on July 24, 1973, in Seattle, Washington.

Appellant appeared by and through its consultant, E. Lee Johnson; respondent appeared by and through its attorney, Keith D. McGoffin. At the outset of the hearing it appeared that appellant had requested a pre-hearing conference but that the Board had nevertheless scheduled a final hearing on the appeal. Mr. Johnson stated that appellant would

1 be content to have the final hearing and did not request any continuance
2 thereof, which the Board would have granted had it been requested to do so

3 Having heard the testimony and considered the exhibits and being
4 fully advised, the Board makes and enters these

5 FINDINGS OF FACT

6 I.

7 Appellant is engaged in the packing business at its plant
8 situated near Auburn in King County, Washington. Having difficulty
9 in controlling visual emissions from its plant, as evidenced by the
10 fact that appellant received five notice of violations from respondent
11 during the period between January 25, 1968, and August 23, 1972, for
12 which no civil penalties were assessed, the proposed compliance schedule
13 of the appellant was accepted by respondent on September 21, 1972.

14 II.

15 A pertinent condition of the compliance schedule acceptance by the
16 respondent was that:

17 "the agency shall be notified in writing immediately in the
18 event that any of the above completion dates or conditions
cannot be met."

19 III.

20 The practical effect of an approved compliance schedule is to
21 excuse a smoke emission violation from the imposition of a civil penalty,
22 but only if the conditions of the compliance schedule are faithfully
23 adhered to by the applicant.

24 IV.

25 On February 8, 1973, one of respondent's inspectors was advised by
26 Mr. Fallick, appellant's Vice President and one of its principle owners,

27 FINDINGS OF FACT,

CONCLUSION AND ORDER

1 that the installation required by the compliance schedule could not
2 be operational by March 1, 1973. Respondent's inspector reminded
3 Mr. Fallick of the fact that it was necessary for him to ask for an
4 extension of the dates of the compliance schedule. Appellant did not
5 take advantage of this advice.

6 V.

7 On February 22, 1973, appellant caused or allowed tan colored smoke
8 to be emitted from its blood dryer stack from its Auburn plant for seven
9 consecutive minutes of a shade darker than Number 2 on the Ringelmann
10 Chart, namely ranging from a Ringelmann 3 1/2 to 4.

11 VI.

12 Section 9.03(a) of respondent's Regulation I makes it unlawful to
13 cause or allow the emission of an air contaminant darker in shade than
14 Number 2 on the Ringelmann Chart for more than three minutes in any
15 hour.

16 VII.

17 By letter dated February 22, 1973, and received by respondent on
18 February 27, 1973, appellant requested an extension of the compliance
19 schedule to allow installation of the equipment. However, the smoke
20 emission violation had occurred prior to the receipt by the respondent of
21 the request for the extension.

22 From which comes this

23 CONCLUSION OF LAW

24 Appellant was in violation of Section 9.03(a) of respondent's
25 Regulation I.

26 FINDINGS OF FACT,
27 CONCLUSION AND ORDER

1 From which comes this

2 ORDER

3 The appeal is denied and Notice of Civil Penalty No. 735 is affirmed
4 DONE at Lacey, Washington this 7th day of August, 1973.

5 POLLUTION CONTROL HEARINGS BOARD

6 
7 W. A. GISSBERG, Member

8 
9 JAMES T. SHEEHY, Member

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 FINDINGS OF FACT,
27 CONCLUSION AND ORDER